

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

-against-

21-cr-0194 (LAK)

RICKEY JOHNSON,

Defendant.
----- x

MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge*.

The governments motion *in limine* (Dkt 34) is resolved as follows:

1. Insofar as the government seeks an order precluding either party from referring to the First Amendment, the motion is GRANTED. The First Amendment does not protect “true threats.” *See, e.g., United States v. Black*, 538 U.S. 343, 359 (2003). “[S]o long as the Government establishes the elements of” the charged crimes, including that [the communication] convey[ed] a true threat,” there is no First Amendment defense. *United States v. Segui*, No. 19-cr-188 (KAM), 2019 WL 8587291, at *14 (E.D.N.Y. Dec. 2, 2019). The Court will charge the jury appropriately. Accordingly, any argument or examination concerning the First Amendment would seriously threaten to confuse the jury and, wittingly or otherwise, invite jury nullification.

2. Insofar as the government seeks an order precluding defendant from offering evidence of his alleged victims’ political views or prior events regarding political events, the motion is GRANTED except insofar as it pertains to possible cross-examination of any of the alleged victims, as to which it is DENIED without prejudice to renewal of the objection at the conclusion of the direct testimony of any such victim in the event any testifies on the government’s case in chief or any rebuttal.

SO ORDERED.

Dated: February 15, 2022

/s/ Lewis A. Kaplan

Lewis A. Kaplan
United States District Judge